COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SUBWAY 3983, INC.	)
	)
COMPLAINANT	)
	)
v.	) CASE NO. 96-036
	)
KENTUCKY UTILITIES COMPANY	)
	)
DEFENDANT	)

<u>ORDER</u>

On January 23, 1996, a complaint was filed on behalf of Subway 3983, Inc. ("Complainant") against Kentucky Utilities Company ("KU"). On May 5, 1995, Subway received a bill from KU which included $4,577.09 in arrearage due to the fact that, as a result of periodic testing in compliance with 807 KAR 5:041, Section 15, the Complainant's meter had been found to be registering only 51.4 percent of the store's electric consumption. Due to the consistency of the readings prior to the meter's removal on January 24, 1995, KU believed that the store had probably been underbilled since it opened in 1992. However, in compliance with KRS 278.225, KU limited its backbilling to two years. While this covered the period from May 1993 until the bill of May 5, 1995, Subway was only actually backbilled for a 21-month period, May 1993 through January 24, 1995, the date the faulty meter was removed.

While the Complainant did not dispute that it had used the amount of electricity for which it was backbilled, it wanted KU to absorb the loss as in its opinion the problem was the result of KU's faulty equipment and KU's failure to abide by Commission regulations, and no fault of its own. The Complainant therefore asked that the arrearage be voided and a refund or credit be given for the amount already paid. A hearing was held June 12, 1996, at which both parties were represented by counsel.

FINDINGS OF FACT

The meter in question was a Sagamo 4-wire, three phase, delta, 120/240 volts, self-contained Form 15S, non-demand meter. Pursuant to 807 KAR 5:041, Section 15(3), such meters are required to be removed for periodic testing every six years. When it was tested on January 31, 1989, it registered 100.1 percent accurate. When removed on January 24, 1995, and subsequently tested, it registered 51.4 percent accurate. The problem was found to be an open left potential coil. In keeping with KU policy, as the meter was greater than 2 percent inaccurate, it was placed on hold status for six months. The meter was rendered inoperable on September 5, 1995, and sold for scrap.

Upon discovering the meter problem, KU contacted Subway through Mike Frantz,[1] one of its owners. Mr. Frantz agreed to let KU perform an energy audit of the store to determine the amount underbilled. Formal notification of the amount due was then sent to Mr. Frantz on March 3, 1995. Mr. Frantz did not agree that the store should be backbilled

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1 KU had several conversations with Mr. Frantz concerning this matter during which Mr. Frantz at all times presented himself to KU as Subway's authorized representative. Mr. Frantz is in fact the owner of 48 percent of the store in question, and was responsible for the payment of bills at the time the backbilling occurred. At the hearing, which Mr. Frantz did not attend, the other owners, Frank and Margaret Mastey, questioned whether KU had erred in not dealing with them rather than Mr. Frantz. Mr. Frantz appears to have been, and probably still is, a valid representative of the Complainant. In any case, KU certainly had no reason to believe he was not.

due to a problem with KU's equipment, and in fact made an informal complaint to the Commission on April 21, 1995.[2] Nevertheless, KU later received a letter from Mr. Frantz, dated June 9, 1995, indicating that while he did not agree that he was "totally liable for this full amount," he was beginning to make payments in the interest of trying to resolve the matter. A check in the amount of $217 accompanied this letter, which was the amount KU had determined Subway was required to pay per month based on a 21-month repayment period. KU continued to receive these monthly payments from Subway through December 1995.

At some point in the latter part of 1995, Margaret Mastey, who owns 52 percent of the store, took responsibility for the payment of bills. It was she who filed this complaint with the Commission in January 1996. Based on the billing history provided by KU, Subway's average bill for the 21-month period for which it is being backbilled was $98.15 per month. According to the energy audit conducted by KU with the assistance of Mr. Frantz, the average monthly bill for that period should have been $327.45. For the 15-month period following the replacement of the meter, again based on information provided by KU, the average monthly bill was $383.94.

DISCUSSION

The Complainant argues that KU failed in its duty to monitor customer usage as required by 807 KAR 5:006, Section 10(3). It argues that an error of that magnitude would have been discovered sooner had KU been properly monitoring the store's usage. The

[2] This fact debunks the Complainant's argument that KU failed to advise it of its administrative remedies. In fact, Commission records indicate that Mr. Frantz even considered requesting that the meter be tested by the Commission. Such a request was never placed.

building occupied by Subway was previously occupied by a boot store, and prior to that it was used as a campaign headquarters, both of which would have used significantly less electricity than Subway. According to KU, the meter failure must have occurred at about the same time Subway began service. As a result, there was no variation in the recorded usage pattern to indicate a problem. This is supported by Subway's billing history.

The Complainant contends that KU has not conformed with 807 KAR 5:041, Section 9(1), which requires all energy sold to be "measured by commercially acceptable measuring devices." There are 1,700 meters in place throughout KU's system like the one through which the Complainant received service. They have been found to have an overall failure rate of nine percent. Of these meters tested in 1995, KU reports a failure rate of 11-13 percent. In KU's Central Division, 20 out of the 79 tested in 1995 failed, or about 25 percent. Of those 20, all had potential coil failures.[3] While there is some merit to the Complainant's contention that a meter with that sort of failure rate is not a commercially acceptable measuring device, the meter as placed by KU did comply with Commission regulations as well as industry standards. KU had no knowledge of the meter's failure, nor did it have any reason to know, until the meter was removed for periodic testing in compliance with 807 KAR 5:041, Section 15(3).

Nevertheless, KU should take aggressive action regarding this particular model of meter due to its excessive failure rate. KU reported that it was conducting a survey because of the recently discovered high percentage of failure. As KU ceased purchasing

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3 According to KU, this case brought to light the failure rate of this model of meter. At the time of the hearing, KU was conducting a survey to see what could be done to remedy this situation. KU ceased purchasing this particular model of meter in 1989, when it was discontinued.

this model of meter several years ago it is no longer placing such meters in service, but over 1,700 remain in use. If nine percent of these are inaccurate, as they have been found to be, 153 are under-registering. If 25 percent are inaccurate across KU's system as a whole, as they have been found to be within the Central Division, as many as 425 could be under-registering. KU should take action to remedy this situation.

The Commission is somewhat concerned with KU's meter holding policy as well. To hold a meter for six months once it is determined to be inaccurate may generally be a reasonable length of time, but KU should take caution to extend that hold period in instances where the bill which resulted from the faulty meter has been disputed, and especially in instances where informal complaints have been made to this Commission. While KU's destruction of the meter in this case may have been justified by the fact that the Complainant had begun to make payments on its arrearage, had had several months prior to that time to request additional tests, and did not file a formal complaint until nearly a year after the meter error was discovered, had there been a need for additional testing of the meter such tests would have not been possible.

CONCLUSIONS OF LAW

Clearly the Complainant was underbilled for the period in question, and the amount of that underbilling is not in dispute. KU did not violate Commission regulations. The meter was properly removed for periodic testing after six years as required by 807 KAR 5:041, Section 15(3). As the meter was found to be greater than two percent slow, KU determined the period during which the error existed and the amount which should have been billed in compliance with 807 KAR 5:006, Section 10(2), and notified Subway of this amount by letter as required by 807 KAR 5:006, Section 10(5). Furthermore, KRS 278.160(2) prohibits utilities from providing service for less compensation than prescribed in its filed schedules, while KRS 278.170(1) prohibits utilities from giving any unreasonable preference to any person. KU was thus required by law to demand full payment for service rendered.

IT IS THEREFORE ORDERED that:

1. The complaint of Subway 3983 against KU is dismissed.

2. Within 20 days of the date of this Order, KU shall establish and file with the Commission a payment plan in accordance with the Commission's regulations and its published tariff which will allow the Complainant to pay the remaining arrearage in accordance with 807 KAR 5:006, Section 10(2). According to this regulation, a utility shall not require a customer to repay an underbilling over a period of time shorter than the period during which the customer was underbilled.

Done at Frankfort, Kentucky, this 14th day of August, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director